BULLETIN

OF THE

NATIONAL ASSOCIATION OF CREDIT MEN.

PUBLISHED MONTHLY BY

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CONTENTS.

New Members Reported During August

CHICAGO, ILL.

Gerts, Lumbard & Co.....F. A. Crego

COLUMBUS, OHIO.

Delaware Underwear Co.....W. A. Morrison

DAYTON, OHIO.

National Cash Register Co.....H. G. Brentlinger

GRAND ISLAND, NEB.

Nebraska Mercantile Co.....John B. Waldo

NEW YORK CITY.

Baird-Untiedt Co., The.....Henry J. Untiedt
Boehm & Levine.....A. Boehm
Engel, Mayer & Co.....Max Engel
Gaillot, Guinot & Co.....David F. Morton
Hitchcock, Wm. G., & Co.....Wm. G. Hitchcock
Horikoshi, Z., & Co.....M. J. Greenberg
Jacobus & Carlisle Co., The.....G. M. Jacobus, Treasurer
Klauber, Horn & Co.....Leo Lewinson
Mali, Henry W. T., & Co.....Paul Coolidge
Manhattan Straw Board Co.....Chas. E. Hawkins
Market and Fulton National Bank, The.....T. J. Stevens, Cash.
Meyers, S. F., Co.....H. M. Manheim
National Bank of North America, The.....E. B. Wire, Cash.
National Shoe and Leather Bank, The.....A. C. Corby, Cash.
New York Millinery and Supply Co.....D. W. Thomas
Pelgram & Meyer.....O. Zimmermann
Stavert, Zigomala & Co.....Samuel Pearsall

PITTSBURGH, PA.

Dietz, Geo. E., & Co.....Geo. E. Dietz

WICHITA, KAN.

Ranney-Davis Mercantile Co.....C. E. Beck

WILLIAMSPORT, PA.

Bubb, Geo., & Sons.....H. C. Bubb
Central Pennsylvania Lumber Co.....R. G. Brownell
Dayton, J. E., Co.....Ira A. Dayton
Rishel, J. K., Furniture Co.....J. K. Rishel, Pres.
Williamsport Mirror & Glass Co.....Robt. A. Schlegel, Pres.

YORK, PA.

Martin Carriage Works, The.....P. A. Elsesser, Secy.-Treas.

Annual Meeting of Board of Directors

The annual meeting of the Board of Directors of the National Association of Credit Men will be held in the Auditorium Hotel, Chicago, Illinois, on the 23d day of October, 1905.

Members who desire to bring matters to the attention of the Board are requested to communicate with the Secretary-Treasurer.

Chatter

It is understood that Mr. John R. Ainsley will retire from business life on the first of January next. Mr. Ainsley has for many years managed the Credit Department of Brown, Durrell & Company, of Boston and New York. He has been an active member of both the National Association of Credit Men and the Boston Credit Men's Association, having participated in the organization of both Associations. At the present time Mr. Ainsley is President of the Boston Credit Men's Association. It is understood that after his retirement he will travel abroad for several years.

Mr. J. Harry Tregoe found time while spending a few days with his family at Asbury Park, to make a hurried trip to New York City. The greater part of his time while in this city was spent in exploring Coney Island. It is rumored that Mr. Tregoe arranged, while there, with several of the attractions now at the Island, to furnish entertainment during the Annual Convention, which will be held at Baltimore next year.

Mr. Willis Davis, of the Southwestern Drug Company, has been elected Secretary of the Wichita Credit Men's Association.

The Annual Convention of the American Bankers' Association will be held at Washington, D. C., October 10-13; many of the members will travel to Washington on "specials." Trains from Chicago to Washington have already been arranged for over the Pennsylvania and the C. & O. lines.

The annual number of "St. Paul Trade," issued in August, is brim full of information. The wholesalers and manufacturers of St. Paul are enjoying, along with the entire Northwest, an era of prosperity. The advertising section of "St. Paul Trade" demonstrates that many members of the National Association of Credit Men are up-to-date advertisers.

President John C. Boss, of the Chicago Credit Men's Association, was in New York recently. Mr. Boss called several times at the National Office.

Mr. T. P. Robbins and Mr. J. B. Pearce, both members of the Cleveland Credit Men's Association, have recently been in New York. Mr. Robbins stopped over for a few hours while on his way to New England for a short vacation. The annual gathering of the Wall Paper Manufacturers brought Mr. Pearce to the city.

President Fessenden announces the appointment of Mr. W. G. Seely, Jr., President of the Detroit Credit Men's Association, as Chairman of the Committee on Improvement in Mercantile Agency Service.

Vice-President Gettys is reported as having recently visited Detroit; while there Mr. Gettys called on President Seely and other members of the Detroit Credit Men's Association.

Ex-President Standart has just returned to Denver from a trip into Alaska. It has not yet been officially announced whether gold was struck or not. Mr. Standart stopped at both Portland, Ore., and Seattle, Wash., where he found time to call on the officers of the Local Credit Men's Associations.

The July and August number of the "Banking and Mercantile World"

contains reports of the Convention of the Bankers' Association of New York, Pennsylvania, South Dakota, Michigan, Minnesota, Iowa, Georgia, Florida, West Virginia, Massachusetts, Virginia, South Carolina, Alabama, Washington, Indian Territory and Tennessee. The magazine is handsomely illustrated and is a credit to its publisher.

The American Bar Association at its Convention held a few days ago at Narragansett Pier, again put itself strongly on record as favoring a permanent bankruptcy law. The Association is opposed to the repealing of the present law. The committees' reports and the resolution adopted in connection with the same will appear on another page of this number of the BULLETIN.

Mr. Eugene S. Elkus, of San Francisco, has been appointed Chairman of the National Committee on Credit Department Methods.

The Annual Meeting of the Portland Association of Credit Men was held recently at which time the following officers were elected:

President, A. H. Devers, of Closset & Devers.
Vice-President, Paul De Haas, of C. Gotzian & Co.
Treasurer, J. L. Schultz, of Preal, Hegele & Co.
Secretary, W. L. Abrams, of Allen & Lewis.

Among those who attended the Annual Convention of the Commercial Law League of America were J. H. Tregoe, of Baltimore, and Secretary-Treasurer Charles E. Meek, New York.

Mr. Tregoe's address was well received by the Leaguers.

The Commercial Law League of America shows a steady increase in its membership, which now numbers about 1,400.

The Annual Meeting of the New York Credit Men's Association was held September 15. The following officers were elected: President, Malcolm Graham, Jr., F. O. Pierce Company; Vice-President, Aaron Naumburg, Jonas & Naumburg; Treasurer, Edw. E. Huber, Eberhard Faber; Executive Committee for Two Years, W. S. Armstrong, Ameri-Felt Company; F. K. Dolbeer, Edison Manufacturing Company; R. T. Fowler, Alexander Smith & Sons Carpet Company; J. D. Hopkins, Jr., Geo. Borgfeldt & Co.; H. Marshall, Joseph Wild & Co.

The Association will give a dinner on the evening of October 18th in honor of President Fessenden of the National Association. At that time the officers just elected will be introduced and the Annual Reports from the different committees of the Association will be presented.

Bread Cast Upon the Waters

National Association of Credit Men, 41 Park Row, New York City:

GENTLEMEN: To-day I found a copy (1900 edition) of "Business Hints," on a street car. Well, to say the least, it was an eye-opener to me. I have been in business three years, and of course have picked up some information pertaining to business, but this is better than I could possibly have gathered by myself in a lifetime. If you have a later edition won't you tell me how I can manage to get it? Awaiting your reply, I am,

Yours truly,

(Signed.)

Report of the Committee on Commercial Law

(Presented at the meeting of the American Bar Association at Narragansett Pier, Rhode Island, August 24, 1905.)

BANKRUPT LAW.

To the American Bar Association:

Your Committee on Commercial Law respectfully report:

At the meeting of the Association in 1897, a paper by Mr. Walter S. Logan, a member of the committee, entitled "A Broader Basis of Credit," was referred to this committee with instructions to report what, if, in their opinion, any, legislation was necessary to carry out the suggestions contained in the paper, and to report such bill or bills as in the judgment of the committee should be deemed advisable to carry out such suggestions.

Before the meeting at which the committee was to report on this subject, the Bankrupt Law, approved July 1, 1898, was passed and went into effect. This law provided to a considerable extent a remedy for many of the evils pointed out in the paper referred to, but in the judgment of the committee and of this Association was far from being perfect as a piece of legislation.

In the years 1898, 1899, 1900, 1901, 1902, 1903, the committee made reports upon the Bankrupt Law and upon proposed amendments to it. All of these reports were approved—generally unanmiously—by the Association.

In the year 1899 the committee, after discussing the subject, summed up its conclusions as follows:

"Your Committee on Commercial Law are of the opinion:

"1. That a bankrupt law is wise and beneficent legislation.

"2. That the general features of the present Bankrupt Law should have the approval and support of the Bar and the commercial community.

"3. That whatever amendments are made to the provisions of the law relating to voluntary bankruptcy should be in the line of a better protection to the creditor against fraud in the bankruptcy proceedings.

"4. That the amendments to the provisions of the law relating to involuntary bankruptcy should be along the lines of a better remedy for the creditor for fraud, actual or contemplated, on the part of the debtor previous to the institution of bankruptcy proceedings.

"5. That the ideal Bankrupt Law is one that

"(*a*) Allows every honest debtor to procure a speedy discharge from his obligations upon the surrender of all his property;

"(*b*) Gives every creditor a complete remedy against actual or contemplated fraud on the part of the debtor;

"(*c*) Punishes all fraud on the part of debtor or creditor with relentless severity."

At the conclusion of the reading of this report it was moved by Mr. Robert D. Benedict, of New York, and seconded by Mr. Everett P. Wheeler, of New York, that the report be approved and adopted, and further, that the committee be instructed to continue its study and investigation of the practical working of the Bankrupt Law, and to report further thereon at the next meeting of the Association, with any amendments they may deem necessary for the perfection of the statute. This motion, after considerable discussion, was unanimously adopted.

At the meeting of the Association in 1900 a report was made by the committee covering fourteen full pages in the Association's report, in which the amendments then pending before Congress, in what is known as the Ray Bill, were discussed at length and approved and other recom-

mendations made in relation to the amendment of the law. The report was fully discussed at the meeting of the Association, the discussion occupying the greater part of one entire session. Hon. E. C. Brandenburg, Assistant United States Attorney General having charge of bankruptcy proceedings, was present, and was invited to participate in the discussion, and did so. After a comparatively unimportant amendment, the report was unanimously adopted.

In the report of the committee for the year 1901 the Ray Bill was further discussed and its passage advocated, and at the conclusion of its reading the following resolutions were unanimously adopted:

"*Resolved,* That the report of the committee be accepted and approved, and

"*Further resolved,* That the Committee on Commercial Law for the ensuing year be authorized and instructed to continue the line of work of its predecessors looking to the perfecting of the Bankrupt Law."

In the winter of 1901 and 1902 the Ray Bill passed the House of Representatives by an overwhelming majority, but was not acted upon by the Senate. In the report of your committee for 1902 the proposed amendments were still further discussed at considerable length and its conclusions unanimously approved and adopted, and the committee was again authorized and directed to advocate and urge proper legislation by Congress on the lines recommended by the report.

On February 5, 1903, the bill which had been so long and so earnestly advocated by the committee and supported by the Association, after having been passed by both houses of Congress, received the signature of the President and became a law. In the discussion of the subject before the committees of Congress your Commercial Law Committee took a leading part, and its chairman was present in the rooms of the Senate Judiciary Committee at the request of the chairman of that committee when the bill was finally reported and put upon its passage in the Senate. The bill as amended was not by any means all that your Committee on Commercial Law desired, but it was so great an improvement on any previous bankruptcy legislation, and embodied so much that your committee had long recommended, that your committee considered its passage a great triumph for the Association. In the work of securing the passage of these amendments your committee co-operated with commercial bodies throughout the nation, and the adoption of the Ray Bill seemed to give general satisfaction to the legal and to the commercial community.

In the report of the committee for 1903 your committee again took strong ground in support of the Bankrupt Law, and, although their conclusions upon subjects other than the Bankrupt Law met with somewhat determined opposition in the Association, their conclusions upon the bankruptcy question were accepted without question.

It thus appears that for seven consecutive years the Committee on Commercial Law have reported in favor of substantially the bankruptcy legislation which now appears upon the statute books of the United States, and that the Association has at all times, with practical unanimity, sustained the committee in their work and adopted their conclusions.

If there is anything that the American Bar Association would seem committed to as a part of the permanent jurisprudence of the United States, it is a bankrupt law embodying the essential features of the present law. The lines upon which the battle for the Bankrupt Law has been fought are those laid down by the American Bar Association, and the existence of the present law is due in very large measure to its continued approval by this Association and the constant contest which it has made in behalf thereof.

A bill is now pending before Congress which proposes to repeal this very Bankrupt Law. Your committee look upon this policy with the utmost disfavor. They believe that the Bankrupt Law, brought to its present improved state largely through the influence of this Association, should be and remain a part of the legal polity of the nation. It should be perfected in all respects in which further improvement is possible. It should be made as far as possible a relief for the honest debtor, a protection for the honest creditor, and a means of punishment of all fraud in connection with bankruptcy. If there are faults in the legislation, they should be remedied by amendment. They should be eliminated by perfecting the existing law. If at any place or at any time this law is found to work injustice, its administration should be improved; but the body of the law should remain. To repeal the present law, only to re-enact another at some future time full of the crudities of new legislation, seems the height of legislative folly. If the law remains, modified only when necessary to make its provisions more logical and its administration more accurate, the business community and the legal profession will readily accommodate themselves to the changes as they have already accommodated themselves to the body of the enactment. If, on the other hand, a bankrupt law is to survive its enactment for a few brief years only and no natural system is to exist for an ensuing period until a new scheme of federal policy is adopted, as has been the past history of bankruptcy legislation in this country, the path of the business man is made harder both by the enactment of the law and by its repeal, and the course of justice runs not on an even keel, but interruptedly, intermittently and unsatisfactorily.

The present law has its enemies. One of its unpopular features in certain quarters is that which prevents preferences and compels all creditors of a bankrupt to share ratably in the division of his estate—a feature which your committee highly commend. Many creditors think that in the race and scramble for a preference they are in a position to fare better than their less fortunate or less favorably situated neighbors. But, however much they might profit by possible preferences, the business community and the general public suffer, and the policy is mischievous.

Your committee cannot conceive that the people of the United States would ever be willing to go back permanently to the methods prevailing at times when there was no national bankrupt law. The only fair and equitable method for the division of an insolvent's estate is the method prescribed by the law. No statute could take its place, for in these days of world-wide commercial relations no one state can have the requisite jurisdiction. It would, in the judgment of your committee, be a reactionary and retrogressive movement to deprive the community of this enactment, which allows an honest but unfortunate debtor to start life anew on the condition of surrendering his whole property to his creditors, and which permits creditors, by taking the initiative, to rescue the salvage of an otherwise hopeless wreck, and to pursue this course without engaging in an unseemly scramble for preferences as among themselves.

Your committee therefore recommend that the American Bar Association adhere to the strong stand taken in years past in support of a bankrupt law as a part of the permanent jurisprudence of the United States, and in support of the present law as being on the whole the best law heretofore enacted.

Your committee specifically recommend the adoption of the following resolutions:

"*Resolved,* 1. That the American Bar Association approves now, as

it has heretofore frequently approved, a bankrupt law as a permanent part of the jurisprudence of the United States.

"2. That the Association regards the present law as by no means perfect or incapable of improvement by amendment, but as drawn upon correct lines and capable of perfection without drastic amendment.

"3. That the Association disapproves of the bill now pending for the repeal of this law, and earnestly asks Congress not to pass it.

"4. That the Committee on Commercial Law be and they are authorized and requested to oppose the passage of the act before the proper Congressional committees and its signature by the President if passed.

"5. That the members of the Association, in sympathy with the conclusions expressed by the committee, be and they are requested to communicate with their Senators and Representatives in Congress to that effect.

"6. That the Secretary of the Association be, and he is hereby directed, to send a copy of these resolutions to each member of the Association as soon after this meeting as practicable without waiting for the publication of the annual report."

Dated July 17, 1905. Respectfully submitted,

WALTER S. LOGAN.
GEORGE WHITELOCK,
F. N. JUDSON,
Majority of Committee.

NOTE.—By reason of absence from the United States of Charles F. Manderson and W. U. Hensel, the other two members of the committee, the subject matter of the foregoing report has not received their consideration.

Try Their Hand at Adjusting

The Columbus Credit Men's Association is formulating plans for an Adjustment Bureau and expects to have the same in operation before long. In order to show the members of the Columbus Association the results to be obtained through the medium of such a bureau, the President and Secretary of that Association recently interested themselves in the affairs of a general storekeeper doing business in Muskingum Valley. This party, who hereafter will be known as Jones, had filed a voluntary petition in bankruptcy. An investigation of Jones' affairs developed the fact that his daughter had been running the business for some time at an average profit of $25.00 a week, Jones in the meantime spending his time and the money in attending shooting matches and drinking bouts. The committee interviewed the daughter and found that she was willing to continue the business and assume the payment of the liabilities of her father, provided she had absolute control of affairs. The committee agreed to this and took the first step in having the petition in bankruptcy dismissed. The next step was to have Jones give a bill of sale and assign his accounts receivable to his daughter; these two items were valued at $1,700, while Jones' liabilities amounted to $1,350.

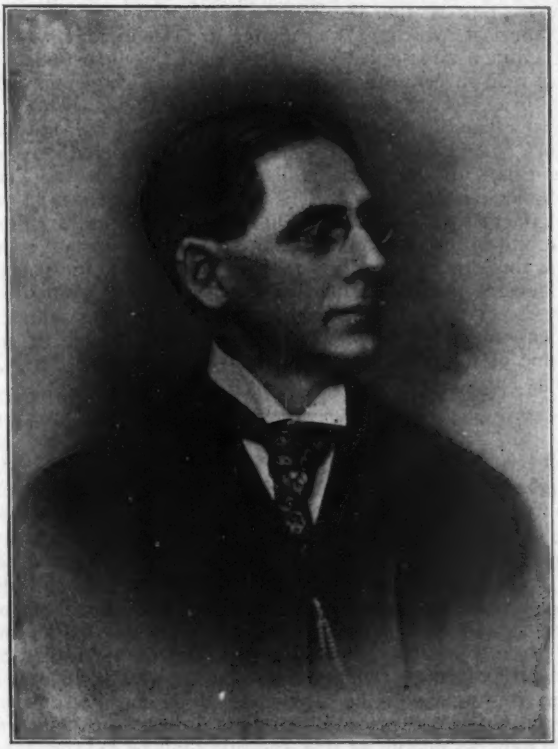
The committee made an arrangement whereby Miss Jones was to be extended sufficient credit to cover immediate wants, and also provided her with banking facilities with the understanding that she deposit daily her entire receipts; all payments were to be made by check. Bills for goods purchased by Miss Jones to be discounted, and whenever the bank account showed a surplus of $100 the same was to be pro rated among the creditors of Jones. Every creditor feels that the committee has acted wisely and that dollar for dollar will be realized. The total expense of handling the adjustment was $34.16.

George G. Ford.

George G. Ford was born January 23, 1864, in Elba, Genesee Co., New York.

He received his education in the public schools of that county, and when about twenty years of age accepted a position as clerk and bookkeeper in a general store in his native town.

The desire for wider opportunities and the attractions of a commercial career caused him to seek employment in the city, and in December, 1885, he entered the employ of Lewis P. Ross, wholesale boot and shoe dealer, of Rochester, N. Y., in the capacity of billing clerk. He has



GEORGE G. FORD.

been connected with that institution ever since, filling in succession the positions of biling clerk, assistant bookkeeper, head bookkeeper, cashier, and for the past ten years manager of the office and credit department. The house with which Mr. Ford is connected is one of the most prosperous in Western New York and one of the most extensive of its kind in the Middle States, distributing annually over $2,000,000 worth of boots, shoes and rubbers in a territory embracing several States and involving the care of a large number of accounts.

Mr. Ford is also interested in and is a member of the firm of G. E. Thing & Co., a new but rapidly growing wholesale boot and shoe house, located at Buffalo, N. Y.

He was one of the incorporators, and has for several years served as president and director, of the Rochester Germicide Co., doing a manufacturing and wholesaling business in disinfectants and disinfecting devices, with headquarters at Rochester, N. Y.

Mr. Ford became interested in the Credit Men's Association soon after it was organized and has for many years been actively identified with both the national and local bodies. He was elected President of the Association in his home city in 1898, serving one term. He has several times served as a member of the local Executive Committee. He was elected a delegate to the National Convention at Detroit in 1898, and was also chosen a delegate to the conventions of Cleveland, Buffalo, Louisville, New York and Memphis, representing the Rochester Association at all these gatherings save the last, which he was unable to attend. He was chosen by President Cannon and served as Chairman of the Boot and Shoe Trade Conference held in connection with the National Convention at Buffalo. In 1901 he was elected treasurer of the National Association, serving a term in that capacity and as a member *ex officio* of the National Board of Directors. At the end of his term he was tendered re-election, but urged the Board of Directors to discontinue the office and combine it with the office of Secretary. This was done and has proved to be a most satisfactory arrangement. On several occasions Mr. Ford's name has been found in the membership of the National Legislative Committee, and it is in this direction perhaps that he has been the most active. He has been several times chairman of the Legislative Committee of the Rochester Association. At the beginning of President Standart's term of office he was urged, and somewhat reluctantly consented, to accept the chairmanship of the National Legislative Committee, the duties of which office he has but recently laid aside.

Bulk Sales Law

The recent decision of the Appellate Division of the New York Supreme Court establishes, at least for the present, the constitutionality of what is known as the bulk sales law. The law of many States provides that any proposed buyer in bulk shall inquire of the seller the names and addresses of his creditors, with amounts due to each, and shall then notify the creditors, either personally or by registered mail, a certain number of days before the sale is to be held. The New York law of 1902, which has been only slightly modified by the amendment of 1904 requires notice to each creditor of whom the buyer can get knowledge at least five days in advance, this notice to be accompanied by an inventory showing quantity, quality and cost price to the seller, also the price which the buyer proposes to pay; in default of this, the sale shall be held void as against creditors, and the seller may be convicted of a misdemeanor for any false information.

In the case decided failure to comply with these provisions was charged, but a demurrer was interposed, in which the constitutionality of the act was attacked. The trial court overruled this demurrer. The majority opinion cited the principle that the police power of the State may be exercised to somewhat restrict the liberty of the individual for the common good. The act in question was designed to prevent debtors from fraudulently disposing of their assets upon which creditors have at least a moral lien. At least twenty-one States have enacted such laws, some of which are almost identical with the one under review. Transactions in the ordinary course of business, the course contemplated when the original owner parted with his goods upon credit, are not aimed at; nor

does the law attempt to prevent or discourage sales made in the unusual method of in bulk—it merely requires certain formalities, otherwise the sale will be void as against creditors. Yet the act does not even make non-compliance with these requirements a punishable neglect. If the vendor pays his debts the sale stands and he is subject to no penalty, though he has not complied with the statute; it is only when he does not pay that the transaction is open to attack. In Massachusetts, Washington, Connecticut, Tennessee, Maryland and Wisconsin, says the court, substantially the same provisions have been held constitutional; but in Ohio and Utah similar legislation has been declared unconstitutional, in the former State as being a discrimination in favor of a class of creditors and a restriction upon trade. The New York court, however, sees no unconstitutionality and considers the object wholesome and the provisions not unreasonable. It merely puts a substantial obstacle in the way of a dishonest vendor who wants to dispose of his stock in an unusual manner, in order that he may receive the proceeds, to the exclusion of his creditors; nor can it be successfully claimed that there is discrimination, for "it is sufficient if a statute applies equally and uniformly, as this one does, to all citizens who are similarly circumstanced."—*Dun's Review.*

Some Recent Legislation

Extracts from the Address of President Bledsoe, at the Annual Convention of the Commercial Law League of America.

"I have limited myself, in the discussion of legislation, to that particularly affecting commercial interests. I have not undertaken to review in full the legislation of the States for the past year. I will simply call your attention to a few of the legislative enactments directly affecting commercial matters.

Maine, Illinois, Michigan, Pennsylvania and Utah have each passed laws regulating sales of merchandise in bulk. I have treated this subject separately, and, in that treatment, have discussed the various phases of these statutes.

Michigan, Kansas, Wyoming and Missouri have adopted the negotiable instruments law. The Missouri statute is so full of typographical errors, and the arrangement is so imperfect, that it is doubtful if the results of the law will not be to unsettle, rather than to settle existing conditions. The Kansas statute is subject to the same criticism, but probably not to the same extent. It will be remembered that the Missouri Legislature had to elect a United States Senator, and that the Kansas Legislature had to deliver a much-needed rebuke to the Standard Oil Company. Possibly this accounts for the lack of attention given to the negotiable instruments statutes enacted by the Legislatures of these two States.

From 1897 to 1904, inclusive, twenty-five States and the District of Columbia enacted negotiable instruments laws as follows:

Arizona, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana Maryland Massachusetts Montana, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, Wisconsin and Wyoming.

Doubtless, with the assistance of the various legal and commercial bodies, before the expiration of many years, practically every State in the Union will have a negotiable instruments law of some character, based upon, if not in all things, in accordance with the New York law.

The Legislatures of Arkansas and North Dakota, each passed stringent anti-trust laws, modeled somewhat after the Sherman anti-trust law.

Indiana and North Carolina have abolished days of grace on commercial paper. In Illinois a law was passed providing that in cities of two hundred thousand inhabitants or more, from twelve o'clock noon to twelve o'clock midnight of each Saturday, which is not a holiday, shall be treated and considered as Sunday for all purposes affecting commercial paper.

The Legislature of Georgia has passed a bill changing the situs of the debt for the purpose of garnishment and attachment, from the residence of the creditor to that of the debtor. The Supreme Court of that State had held that the situs of the debt for the purpose of garnishment was that of the residence of the creditor.

In Tennessee, heretofore, appeals might be prosecuted to the Supreme Court of that State from judgments of the inferior courts upon the execution of a cost bond alone. Such appeal, upon the approval of the cost bond, operating as a supersedeas. During the last session of the Tennessee Legislature, a law was enacted requiring the appellant in such case to execute a bond, not only for the payment of the costs, but for the payment of the judgment, if it should be affirmed, as a condition precedent to the superseding of such judgment. It is strange that a State of the enlightenment and intelligence of the State of Tennessee should have so long retained such a law upon its statute books. The State and creditors whose claims have been unreasonably delayed without any security whatever, are to be congratulated upon the change."

Apparently without any particular demand from any source, and certainly without any general public demand, the House Committee on Judiciary reported in favor of the repeal of the bankruptcy law. The principal reasons assigned therefore are as follows:

"The friends of the present bankruptcy law who belong to the creditor class are constantly endeavoring to perfect this act into mere machinery for the collection of debts, minimizing or ignoring, as far as possible, the primary purpose of bankruptcy legislation—the relief of unfortunate debtors. On the other hand, it is not to be denied that many dishonest men are taking repeated advantage of the law to avoid the payment of just debts. The country is now in such a condition that it can, without hurt to the great business interests, dispense with the bankruptcy law. Should a panic arise and commercial disasters overwhelm the country, then it might be advisable to enact a temporary bankruptcy law."

The debtor class generally, excluding those who are desirous of getting an immediate discharge from their debts, is opposed to a bankruptcy law. One of the reasons for this opposition is because the law is administered in a federal court. The federal courts are not so convenieutly located as the State courts, and usually enforce the law with less regard to consequences to the individual than do the State courts.

Bankers and wholesale merchants whose business transactions extend only over a limited territory, and who know personally every customer, and could, in the absence of a bankruptcy law, rely upon securing a preference, are generally in favor of a repeal.

Among the lawyers will be found many who are in favor of its repeal. This is brought about, to some extent, by the fact that the lawyer often finds himself, while representing only a small percentage of the indebtedness, compelled to carry the burden of administering the entire estate. He can do nothing for his individual client that will not redound to the benefit of a score of other creditors who will not compensate him. The restraining influence of the bankruptcy law stands between him and results that might otherwise be easily accomplished for the benefit of his client. Every lawyer loyal to the interest of his client bears with much impatience any restraint that interferes with his rendering to his client services to

the full measure of his ability. To add to this, he not infrequently finds that a forwarding agency in a large city sends him one claim and mails a dozen direct to the referee. The report he makes upon the one claim enables the forwarder to keep all of its clients fully advised.

It is a matter of little surprise that many lawyers weary of these restraints and impositions, favor a repeal.

The National Association of Referees in Bankruptcy recommend nine amendments to the bankruptcy law, which are as follows:

First. That the compensation of receivers shall not in any event exceed that permitted to trustees for similar services, and that ten days' notice of the application therefor, specifying the amount applied for, be given to all the creditors.

Second. That such compensation shall be based on the gross proceeds realized and not on the appraised values, and shall be paid when the trustee's fees are paid.

Third. That attorneys' fees shall only be allowed for legal services that are absolutely necessary, and shall be allowed only upon verified and itemized accounts being filed and only after ten days' notice to the creditors, specifying the amount applied for.

Fourth. That receivers be appointed only when absolutely necessary for the preservation of the estate and after reasonable notice to the bankrupt, unless such notice is dispensed with for good cause shown and after reasonable notice to such creditors as can be reached.

Fifth. That where the bankrupt shall have lost money or property at gambling, within four months of such bankruptcy, his discharge be not granted to him until he shall, within one year of his adjudication, return such money or such property or its value at the time of such loss.

Sixth. That the present third objection to a discharge (Section 14, Subdivision B) be rephrased as it was in the original Ray bill.

Seventh. As an additional objection to a discharge, that the bankrupt has not accounted satisfactorily for losses, and that, on this objection, the burden of proof is on the bankrupt.

Eighth. That trustees be constituted proper parties to object to the bankrupt's discharge.

Ninth. That there be added to Section 60, Subdivision A, these words: "Or recording or filing in any office provided by law in which deeds, mortgages, chattel mortgages, transfers or assignments may be recorded, the effect of which record is to give constructive notice."

Four of these amendments, it can be seen, are directed against attorneys and their methods, four against bankrupts, and one apparently against preferences. I say they are directed against attorneys because the receivers are usually appointed and their compensation fixed at the instance of an attorney. This has been the practice from time immemorial. Ten receivers are appointed outside of bankruptcy litigation to where one is appointed by a bankruptcy court. Other courts of equity have not found themselves unable to protect estates against exorbitant fees claimed by attorneys and receivers. The bankruptcy law certainly gives no encouragement to unreasonable allowances. It nowhere authorizes an allowance except for services actually rendered.

Section 62 of the bankruptcy law requires "that the actual and necessary expenses incurred by officers in the administration of the estate shall, except where other provisions are made for their payment, be reported in detail under oath and examined and approved, or disapproved, by the court." The word "court" here includes referee.

If the provisions of this statute are observed, none other than the statutory fees, the fees of attorneys for the petitioning creditors, and

attorneys for bankrupts, can be paid out as expenses without a report in detail under oath and without the examination and approval of the court.

The amount of fees to be allowed attorneys for petitioning creditors and bankrupts is largely in the discretion of the court. No procedure is provided for ascertaining the amount of such allowances. The issues are made up under the direction of the court. It would be an absurdity to say that the court could not, as a condition precedent to the consideration and allowance of such a claim, require a detailed statement under oath of the services rendered.

I seriously question if a single instance can be cited by a referee in which an attorney or receiver has declined to render such a statement.

Why should the bankrupt court be required to fix a receiver's compensation on the basis of "gross proceeds?" This leaves out of question entirely the character and extent of services rendered by the receiver, which should constitute the basis of his compensation. Why not leave the court as it now is—untrammelled—to fix the compensation according to the justice and the right of the matter. It would be very difficult to fix a better arbitrary standard. If there was no necessity for the receivership, apparent or real, the cost should be taxed against the petitioning creditors, and not paid out of the estate.

It is suggested that a receiver should not be appointed except when absolutely necessary for the preservation of the estate. That is the language of the present bankruptcy law. Why amend by using the same language that is now in the act?

It is further suggested that a receiver should not be appointed without reasonable notice to the bankrupt and such creditors as can be reached, unless such notice is dispensed with for good cause. Bankruptcy proceedings are controlled by general equity practice. The equity rule upon this subject is that the court will not appoint a receiver until the defendant or party in possession of the property has been heard or has had an opportunity to be heard, unless there is imminent danger of loss, great damage, irreparable injury, or a grave emergency. The amendment suggested would add nothing to the existing law.

It is further suggested that the bill be so amended as to provide for ten days' notice of application for allowance of receivers' and attorneys' fees. There is nothing in the present law that prohibits a referee from setting such application for hearing at some future date and giving the creditors notice of same. The requirement that notice shall be given in certain instances, does not preclude the idea of its being given in others. No amendment is needed to authorize the referee to pursue this course.

If abuses have crept in in these particulars, it is the fault of the administration of the law and not of the law itself. Most referees were, before their appointment, lawyers, and are capable of judging whether the amounts asked by receivers and attorneys are extortionate or unjust. If a claim for compensation, which they believe to be unreasonable, is presented, and there is no one present to object, it is the duty of the referee to set the matter for hearing at a given time and notify the creditors so that they may have an opportunity to protest if they desire to do so. If he fails to do this, and allows an exorbitant fee, there is no one more to blame than he. No man should hold the office of referee who has not the moral courage to disallow an improper or reduce an extortionate demand regardless of who presents it.

To the extent that attorneys take an active interest in the administration of estates in bankruptcy, will their administration be successful and the law accomplish the purposes for which it was designed. Elim-

inate the attorneys, and transactions reeking with fraud will pass undiscovered through the courts.

Perhaps the administration of estates would be somewhat facilitated by enlarging the authority of the court of bankruptcy so as to authorize the sale of property in the hands of a receiver, when such property is found to be deteriorating in value. At the present time the sale can only be made upon the theory that the property is of a perishable nature. Also by giving receivers authority to institute proceedings in other jurisdictions for the protection and preservation of the property of the estate.

The extradition provision should be so amended as to provide for the return of the bankrupt even though he left the jurisdiction before the filing of the petition.

The last five amendments proposed by the National Association of Referees contain much that is meritorious, and if the law is to stand, should be incorporated in its provisions. This is especially true of the recommendations in reference to discharges. I am unalterably opposed to the granting of a discharge to any man who has not fairly and without compulsion surrendered his entire assets as required by law. The purpose of a discharge is to enable unfortunate honest men to start anew in life, and not to license the bankrupt vampire to begin anew his preying upon the commercial world.

If the League expects to be of any force in matters of legislation, it must declare its position in unmistakable terms, and lend its best efforts to assure the success of the position it takes. The repeal of the bankruptcy law is a live question. If we are in favor of its repeal, let us say so and set about seeing that it is done.

If, on mature deliberation, however, we are satisfied that the interests of the public generally, both creditor and debtor class, will be best subserved by retaining and perfecting the law, let us say so and lend our efforts to that end. In any event, we should have the courage of our convictions, say what we think and feel, and support what we say with our best efforts. No body of men is better qualified to speak of the benefits and abuses of this law than are we. We do not judge it from the standpoint alone, of either the creditor or the debtor. Our experience and observation qualify us to speak of its workings from every standpoint.

And it is from this broad view-point that we should consider the act. Personal prejudices should not control. Is the law, upon the whole, a better solution of the vexed questions with which it deals, than are the various State insolvency laws? Does it best secure an equitable distribution of the insolvent's estate among those entitled to share in it? Is there not something to commend in its uniformity and exclusiveness? Isn't it in keeping with the dictates of humanity that the honest man who has surrendered his all, should be given an opportunity, unembarrassed by previous misfortune, to again acquire something for himself and those dependent upon him?

Wholesale merchants, for some years past, have realized the inadequacy of existing remedies in cases where the retail merchant sells the whole, or a larger part, of his stock in bulk to a third person who claims to have purchased for cash and paid therefor. Such purchaser always claims to be, but seldom is, an innocent purchaser for value, without notice of the claims of creditors. As against transactions of this character, creditors have usually found themselves without a satisfactory remedy.

Out of this condition of affairs has grown a demand for legislation that will better protect creditors' rights, and furnish a more adequate remedy against such fraudulent sales. As a result of this demand, the

following States and Territories have enacted what are styled Sales in Bulk Laws, to-wit:

Michigan, California, District of Columbia, Georgia, Idaho, Indiana, Kentucky, Massachusetts, Ohio, Oregon, Utah, Washington, Pennsylvania, Maine, Illinois, Colorado, Delaware, Maryland, Minnesota, New York, Oklahoma, Tennessee, Virginia, Wisconsin, Louisiana, Wyoming and Connecticut.

These statutes usually require that both the seller and buyer notify all creditors a given number of days before the sale is consummated, and make an inventory, showing, as nearly as possible, the cost price of the merchandise to the debtor; that the purchaser shall demand, and the seller shall furnish, in writing under oath, a complete list of his creditors with the amount owing to each, with the further provision that if the seller shall knowingly make an incomplete or false statement he shall be guilty of a misdemeanor, and punished accordingly.

Very few of these statutes are identical throughout. They may be divided into two classes. In one a failure to comply with the provisions of the statute renders the sale fraudulent and void, or raises a conclusive presumption of fraud.

In the second class should be placed those which make the failure to comply with the statute merely presumptive or prima facie evidence of fraud.

The first sixteen States above mentioned belong in the first class; the next nine in the second class, and Louisiana and Connecticut should not be classed with either. The Connecticut statute simply provides that no sale shall be made unless, seven days prior to the making of the same, the seller shall cause to be entered on record in the clerk's office of his county, substantially such facts as the creditors are required to have notice of under the other statutes.

One section of the Louisiana statute makes it a misdemeanor to dispose of a stock of merchandise out of the usual course of business with intent to cheat or defraud the original seller or vender. And another section makes it a misdemeanor to wilfully and knowingly purchase such stock, without exacting from the seller a written statement sworn to, showing that the merchandise has been paid for. Both of these offenses are punishable by a fine in the discretion of the court, and by imprisonment for not less than six, nor more than twelve months. The concluding section of the act makes the failure of the seller to pay over to his vendor or vendors the price of such merchandise in proportion to their claims, or to return the same, and the failure of the purchaser to secure such sworn statement from the seller, prima facie evidence of a fraudulent intent in both civil and criminal proceedings.

The new sales in bulk statute of Utah, enacted in lieu of the one declared unconstitutional in the case of Bloch v. Schwartz, hereinafter discussed, possesses peculiar interest, in view of the fact that in its enactment it was sought to avoid the constitutional objections urged against the previous act. The act is styled, "An Act to regulate the purchase, sale, transfer and incumbrance of a stock of goods, wares, or merchandise in bulk, or of any portion of the stock of goods, wares and merchandise, otherwise than in the usual course of trade, and prescribing penalties for the violation thereof."

This act makes it incumbent upon the purchaser of a stock of merchandise to require from the seller of such stock a sworn statement of the names and addresses of all of the creditors of the seller, together with the amount owing to each. The act further makes it the duty of the purchaser to notify every creditor named in such sworn statement

of the proposed sale or transfer with the price thereof, the person to whom such transfer or sale is to be made, and the time and condition of the payment.

The purchaser is further required to see that the purchase money is applied to the payment of the bona fide claims of the creditors of the vendor, as shown upon the verified statement, share and share alike. If this is not done, the sale is declared to be fraudulent and void.

The act also provides for penalties for making false statements, etc.

It will be noted that that part of the legislation usually found in the statutes of the other States requiring an inventory, is omitted from this statute, and the clause making it a penalty to make such a conveyance that was in the original Utah statute, is eliminated. The seller of the stock is also relieved of the burden of giving notice to creditors. The purchaser has this burden imposed upon him, and the additional burden of seeing that the money is applied to the payment of the creditors of the seller, share and share alike.

The constitutionality of these statutes has been assailed in several cases in which it has been strenuously insisted that they were unconstitutional and void for the following reasons among others, to-wit:

First: That it is class legislation; that it discriminates against the merchant who is indebted, as considered in connection with the merchant who owes no debt, or the farmer, the trader or real estate dealer who may be indebted; that the indebted merchant who is prohibited from disposing of his property as freely as the merchant who owes no debts, the farmer, trader or real estate dealer, who is indebted, is denied the equal protection of the laws guaranteed to him by the fourteenth amendment to the Federal Constitution.

Second. That such legislation is in violation of that part of the fourteenth amendment to the Federal Constitution which prohibits the taking of property without due process of law.

The last contention is based upon the assumption that the act so limits and restricts the indebted merchant in the handling and disposition of his property as to practically destroy its value. It is insisted that "depriving an owner of property of one of its essential attributes, is depriving him of his property within the meaning of the constitutional provision, that no person shall be deprived of life, liberty or property without due process of law." That it also deprives the party of the right to contract, which is both liberty and property under the Federal Constitution.

The statutes of Indiana,[1] Utah,[2] and Ohio[3] have been held obnoxious to the constitutional provisions of each of said States respectively by the Supreme Courts thereof. The statutes of Massachusetts,[4] Washington,[5] Tennessee,[6] Connecticut,[7] and New York[8] have, by the Supreme Court of each of those States been held valid, and not to conflict with, nor infringe upon, constitutional guaranties.

In both the Tennessee and New York cases there were able dissenting opinions. So far as I have been able to learn, the Court of Appeals of the State of New York has not passed upon the validity of the New York statute.

In no case in which the failure to comply with the statute is given the effect of creating a presumption of fraud, has the statute been held

1. McKinster v. Sager, 72 N. E. p. 854.
2. Block v. Schwartz, 76 Pac. p. 22.
3. Miller v. Crawford, 70 Ohio State Rep. p. 207.
4. Squire & Co. v. Tellier, 69 N. E. 312.
5. McDaniels v. Connelly Shoe Co., 71 Pacific, p. 37.
6. Neas v. Borches, 109 Tenn. p. 398, 71 S. W. p. 50.
7. Walp v. Lamphin & Foster, 57 Atlantic, p. 277.
8. Wright, Trustee, v. Hart.

unconstitutional. In each of the cases in which it was held unconstitutional, the statute either declared such a sale to be fraudulent and void, or declared, which is equivalent thereto, that it should be conclusively presumed to be fraudulent and void.

Although the courts discussed these statutes at length, thoroughly considering both classes of cases, no reference is anywhere made in any of the opinions to the difference in effect between the statute which declares the transaction shall be conclusively presumed to be fraudulent, and the one which makes it presumptively fraudulent.

The statute, which declares that a sale made without complying with its provisions is to be conclusively presumed to be fraudulent and void, does not fix a rule of evidence, though in form it may appear to do so. It enacts a substantive law which, if its validity be conceded, renders the transaction invalid to the same extent as if it had been specifically so declared.

There is no excuse for a juggling of words by declaring that these transactions shall be conclusively presumed to be fraudulent. The prohibition cannot be thereby divested of its effect as substantive law, and converted into a rule of evidence.

The statutes which declare such transaction fraudulent and void, or that it shall be conclusively so presumed, are of very questionable validity. Although they may be sustained by the Supreme Court of the State whose legislature gave them life, it is entirely possible that the Supreme Court of the United States, the court of last resort, where the question involved is an alleged violation of the Constitution of the United States, may, by one decision, render all these statutes nugatory.

If we concede the constitutionality of the statute which declares such transactions void, we have a much more efficient remedy than under the statutes which belong to the other class.

Frequently, shifting the burden of proof affords no substantial relief. The attorney for the defendants in such an action may so shape his pleading as to secure the right to open and conclude the argument.

It will be realized at once by the active practitioner that the benefits gained by shifting the burden of proof are usually more than offset by the right to open and conclude the argument.

Certainly the statute which merely shifts the burden of proof cannot be open to constitutional objection. The same rule is frequently worked out by the courts in cases where the necessity for it is not so great, without considering that they are invading the province of the legislature. The transactions that have given rise to the demand for this legislation have been of such an outrageous nature, and so far beyond the reach of existing laws, that it is hoped that the constitutionality of these laws will be so far sustained as to give the creditor more than the benefit of shifting upon the fraudulent vendee the burden of proof.

Let It In.

When you're feelin' grouchy,
  Let the sunshine in;
When your face gets feelin' hard,
  Crack it with a grin.
Don't be 'fraid o' wrinkles,
  Tear loose with your mirth;
An old face, laughter-wrinkled,
  Is the sweetest thing on earth.

—*Houston Post.*

Utah Again on the Band Wagon

The Legislature of Utah during its last session, again put upon the statute books of that State the law Regulating the Sale of Stocks of Merchandise in Bulk. The new law is modeled on lines similar to the Washington law, which has been held by the Supreme Court of that State to be constitutional. The new law is as follows:

AN ACT RELATING TO SALES OF MERCHANDISE IN BULK.

Be it enacted by the Legislature of the State of Utah:

SECTION 1. It shall be the duty of every person who shall bargain for or purchase any *portion of a* stock of merchandise, otherwise than in the ordinary course of trade and in the regular and usual prosecution of the seller's business, or an entire stock of merchandise in bulk, *for cash or on credit,* before paying to the vendor or his agent or representative, or delivering to the vendor or his agent or representative, any part of the purchase price thereof or any promissory note or evidence therefor, to demand of and receive from such vendor or agent, or if the vendor or agent be a corporation, then from the President, Vice-president, Secretary, or Managing Agent of such corporation, a written statement, sworn to substantially as hereinafter provided, of the names and addresses of all the creditors of said vendor to whom said vendor may be indebted, together with the amount of the indebtedness due or owing or to become due or owing by said vendor, to each of the said creditors, and it shall be the duty of the said vendor or agent to furnish such statement which shall be verified by an oath to the following effect:

STATE OF UTAH, }
COUNTY OF } ss:

Before me personally appeared (vendor or agent, as the case may be) who being by me first duly sworn upon his oath, did depose and say, that the foregoing statement contains the names of all the creditors of (name of vendor), together with their addresses, and that the amount set opposite each of said respective names is the amount now due and owing, and which shall become due and owing by (vendor) to such creditors, and that there are no creditors holding claims due or which shall become due for or on account of goods, wares or merchandise purchased upon credit or on account of money borrowed to carry on the business of which said goods are a part, other than as set forth in said statement and in this affidavit that are within the personal knowledge of the affiant.

Subscribed and sworn to before me this....day of....., A. D.

Section 2. Whenever any person shall bargain for or purchase any portion of a stock of merchandise otherwise than in the ordinary course of trade and in the regular and usual prosecution of the seller's business, or an entire stock of merchandise in bulk, for cash or on credit, and shall pay any part of the price, or execute and deliver to the vendor thereof or to his order, or to any person for his use, any promissory note or other evidence of indebtedness, to give credit, whether or not evidenced by promissory note or other evidence of indebtedness, for said purchase price or any part thereof, without at least five days previously thereto having demanded and received from the said vendor or from his agent the statement provided for in Section 1 of this act, and verified as heretofore provided, and without notifying also at least five days previously thereto personally or by registered mail, every creditor as shown upon said verified statement of said proposed sale or transfer, with the price thereof, the person to whom said sale or transfer is to be made, and the time and conditions of payment, and without paying or seeing to it that the pur-

chase money of said property is applied to the payment of bona fide claims of the creditors of the vendor as shown upon said verified statement, share and share alike, such sale, or transfer shall be fraudulent and void.

Section 3. Any vendor of any portion of a stock of merchandise otherwise than in the ordinary course of trade and in the regular and usual prosecution of the seller's business or an entire stock of merchandise in bulk, or any person who is acting for or on behalf of such vendor shall knowingly or wilfully make or deliver or cause to be made or delivered a statement as provided for in Section 1 of this act, which shall not include the names of all the creditors of such vendor with the correct amount due and to become due to each of them or which shall contain any false or untrue statement, shall be deemed guilty of perjury, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one, nor more than five years, or shall be fined in any sum not exceeding $2,000.00 or both fine and imprisonment.

Section 4. Any sale or any transfer of any portion of a stock of merchandise otherwise than in the ordinary course of trade and in the regular and usual prosecution of the seller's business or an entire stock of merchandise in bulk, or whenever an interest in or to the business or trade of the vendor is sold or conveyed, such shall be deemed a sale and transfer in contemplation of this act; provided, however, that if such vendor produces and delivers a written waiver of the provisions of the act from at least a majority in number and amounts of his creditors as shown by such verified statement, then and in that case, the provisions of this act shall not apply.

Section 5. Sellers, or vendors, and purchasers under this act shall include corporations, associations, co-partnerships, and individuals, but nothing contained in this act shall apply to sales or transfers by executors, administrators, receivers, assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy or by any public officer under judicial process.

The Bankruptcy Law

By Hon. Knute Nelson, United States Senator from Minnesota.

Mr. President and Gentlemen—I feel somewhat flattered in being invited—a plain farmer and a country lawyer, to meet in a gathering of this kind, and yet I feel that I am in a measure entitled to be with you to-day. It was upon my amendment offered in the Senate that the Gold Coinage Law, or the law establishing gold as our currency, was passed, and that we provided for the establishment of small National banks with a capital of $25,000 in towns of two thousand people and less. Before that time no National bank could be established with a capital of less than $50,000. I think the result has shown that the amendment providing for the establishment of these small banks has given great satisfaction. We have had a large number (I do not remember the number) established throughout the country, in our State and others, and it has been the means of bringing good banking facilities near to the people.

Your secretary has invited me to meet with you, and has requested me to discuss and explain the provisions of the Bankruptcy Law, and in pursuance of that invitation and request I am here before you to-day.

By Paragraph 4, of Section 8, of Article I, of the Constitution of the United States, Congress was given power "to establish * * * uniform laws on the subject of Bankruptcies through the U. S."

The first bankruptcy act was passed April 4, 1800. At this time imprisonment for debt, in one form or another, prevailed in most if not

all of the States, and the exemption of property from levy on execution was very scant and next to nothing. The act only permitted involuntary proceedings, against merchants, traders, bankers, brokers, factors and insurers, upon the petition of their creditors, but upon such a variety of grounds that it was impossible for any one in embarrassed circumstances, under the conditions then prevailing, to escape bankruptcy except through the mercy or charity of creditors, which as a rule could not be depended upon. The act prescribed no fees—these were wholly discretionary with the Court—and it was most drastic in its provisions and would not to-day be tolerated for a single moment. The only absolute exemptions were the wearing apparel and the beds and bedding of the bankrupt and his family. If his estate paid 50 per cent of the proved debts he might receive an allowance of 5 per cent upon the net produce of his estate, but not to exceed in all $500. If his estate paid 75 per cent he might receive 10 per cent, but not to exceed in all $800. But if his estate paid less than 50 per cent he could, as a matter of grace, receive an allowance not to exceed $300. If the bankrupt failed to surrender or deliver every particle of his property, except wearing apparel, beds and bedding, he could be imprisoned for from one to ten years. Although forced into bankruptcy by his creditors, and they secured all he possessed, and although he acted in good faith throughout, yet unless his estate paid at least 50 cents on the dollar and two-thirds in number and value of his creditors consented, he could not get his discharge. I have not time to dwell on the many drastic features of this act. To the poor debtor it was most cruel and oppressive, and the only advantage to the creditors was that they could all share equally in the wreck. The procedure was very cumbrous, dilatory and expensive. By the terms of the act it was to remain in force for five years and from thence to the end of the next session of Congress, but owing to the harsh and drastic features of the act and the havoc it wrought it was repealed as early as the 19th day of December, 1803.

The next bankruptcy act was passed August 19, 1841. This act provided for both voluntary and involuntary bankruptcy. All persons, without regard to the amount of their indebtedness, could upon their own petition, become voluntary bankrupts, but only merchants, bankers, factors, brokers and insurers, owing debts to the amount of not less than $2,000 could be made involuntary bankrupts upon the petition of their creditors. Insolvency alone was a ground for voluntary bankruptcy, and a person was deemed insolvent who could not pay his debts when due. Fraud, actual and constructive, of various kinds and in various forms, and concealment—but not mere insolvency alone—were grounds for involuntary bankruptcy. The exemptions under this act were wearing apparel and household and kitchen furniture not exceeding $300 in value. Every bankrupt, who honestly surrendered all his property to his creditors and was guilty of no fraud or concealment, could, unless a majority in number and value of his creditors dissented, obtain his discharge without regard to the amount paid his creditors, and in case of such dissent by the creditors he could invoke a trial by court and jury, and if the court or jury found that he had made full disclosure and surrendered all his property he would be entitled to his discharge. But an exception was made in case of a voluntary bankrupt who had given a preference to some creditor. He could not obtain a discharge without the consent of a majority in interest of the creditors who had not been preferred. While under the act of 1800 three commissioners were appointed by the court who, like the referee under the existing law, performed all the routine work incident to the proceedings, under the act of 1841 all the work was done directly by the District Court. But both acts provided for assignees whose func-

tions and duties were analogous to that of the trustees under the present law. The act of 1841 prescribed no fees but left the same to be fixed and prescribed by the court. A bankrupt, who had obtained his discharge under the act, if he afterwards became a bankrupt, could not again obtain a discharge unless his estate paid 75 per cent of the proved claims. On account of the rigid and searching collection laws then prevailing in the several States, wholly unlike what they now are and for many years have been, this act was deemed too lax and too liberal, and as a consequence it was repealed March 3, 1843.

Owing to the fact that neither of these laws fixed the fees and compensation, but left it wholly with the courts to fix and determine, the fees and compensation were in many cases extravagant and excessive, and this was one of the grounds that made these acts unpopular.

The next bankruptcy act was passed March 2, 1867, and, like the former acts, it conferred bankruptcy jurisdiction upon the District Courts of the United States. It provided for the appointment of one or more Registers in Bankruptcy in each Congressional district, whose duties were analogous to the duties of the Referees under the present act. It made provision for voluntary and involuntary bankruptcy. Any person who was insolvent and who owed debts exceeding the amount of $300 could, upon his own petition, be adjudged a voluntary bankrupt and obtain the benefit of the act. Any person owing debts who was guilty of the fraudulent or illegal acts described in Section 39—substantially the same grounds as prescribed in the acts of 1800 and 1841, could, upon the petition of one or more of his creditors whose provable debts amounted to at least $250, be adjudged an involuntary bankrupt; and any banker, merchant or trader who had "fraudulently stopped or suspended and not resumed payment of his commercial paper within a period of fourteen days should be deemed to have committed an act of bankruptcy," and could be adjudged an involuntary bankrupt. In 1870 this provision was amended so as to also include a broker, manufacturer and miner. This later provision, in its original and amended form, was an entirely new ground for bankruptcy not found in either of the former acts, and proved to be one of the chief grounds for involuntary bankruptcy proceedings under this act, and proved the cause of much hardship and great litigation. This ground is not embraced in the act of 1898. The act of 1867 provided for the appointment of one or more assignees selected by the creditors. These assignees had practically the same duties and functions as the trustees under the present law. The act for the first time substantially applied and gave effect to the exemption laws of the several States—the same as the act of 1898. Every bankrupt could, in proceedings instituted within one year after the act was passed, obtain his discharge without regard to the percentage paid on the claims of his creditors if he had not been guilty of the frauds, neglects and offenses prescribed in Section 29 of the act, too numerous to be here specified in detail. But in proceedings commenced after one year from the passage of the act he could not obtain his discharge unless he had paid 50 per cent. of his claims and had also obtained the consent in writing of a majority in number and in value of his creditors.

The penalties prescribed in the act were numerous and severe, and in general the provisions were harsh and drastic, as much so as the act of 1800, and even worse, because more minute and extensive. A very high schedule of fees was prescribed for the Register, the Clerk and the Marshal, and other and additional fees could be prescribed by the Court. The compensation and allowances of the assignees were wholly in the discretion of the court to be fixed and allowed in each particular case.

The act proved quite drastic, harsh and oppressive, especially to bankers, merchants, manufacturers and traders who were unable to promptly meet their commercial paper when due. Default from whatever cause, if it lasted for more than fourteen days, was deemed an act of bankruptcy, and the unfortunate debtor, however much property he might have over and above his debts and exemptions, if, through a temporary money stringency, he was unable to pay on the spot, he was regarded as insolvent and a bankrupt.

The fees and allowances granted under the act to the registers, assignees and other officials were to a large extent excessive, and the proceeds of small and even moderate estates were swallowed up in such fees and allowances, and the creditors got little or nothing. In many cases the only persons who reaped any advantage were the officials. The creditors got nothing or next to nothing, and the poor bankrupt could not even get his discharge. Many registers accumulated handsome fortunes under the law. The act was somewhat amended—liberalized and made less drastic—in 1874. Under this amendatory act the fees were to some extent cut down, the voluntary bankrupt, if he paid 30 per cent of his debts, could, with the consent of one-fourth in number and one-third in value of his creditors, obtain his discharge, while the involuntary bankrupt could obtain his discharge without the consent of his creditors without any regard as to what percentage was paid on his debts. But the drastic penalties, the numerous and unreasonable grounds for bankruptcy, including mere suspension of payment for fourteen days, and the numerous exceptions and limitations upon discharges, remained; and while the fees had been somewhat reduced they were still too high and excessive—still a gold mine to the officials to the detriment of the bankrupt and the creditors. The law, on account of its drastic and oppressive features, its expensive and wasteful character, and the hardships it had wrought, gradually became more and more unpopular, and was finally repealed on the 7th day of June, 1878, and creditors were again remitted to a scramble under the various attachment and insolvent laws of the several States and Territories.

The act of 1867 was not only in itself and by its terms harsh and oppressive, but what made it still more harsh and oppressive was the fact that during its life the country was passing from a highly inflated paper basis, the result of our great Civil War, to a gold basis, involving a considerable contraction in the volume and a great rise in the value of our currency, and the brunt of this burden and loss fell to a very large extent upon the debtors, and greatly aggravated their embarrassment and made them more amenable to bankruptcy proceedings. Through the law the creditor sought to save as much as he could from the wreck of the involuntary bankrupt. And the voluntary bankrupt sought an opportunity to take a fresh start in life, relieved of his former burdens.

A few years after the repeal of this law the commercial classes began to feel, as they always will feel, the want of a National Bankruptcy Law. State insolvent laws were expensive, unsatisfactory and delusive, and no two States had similar laws. State attachment laws involved a mere scramble and rush for priority where he who was first got something, while they who followed too often got only costs and attorney fees to pay for their pains.

About nine or ten years after the repeal of this law an organized movement was initiated by numerous and various commercial bodies throughout the country to secure a new bankruptcy law. At their instance Mr. Torrey, a prominent lawyer, drafted a very comprehensive bill largely along the same lines as, and with most of the bad features of,

the act of 1867. It was known as the "Torrey Bill," and provided for both voluntary and involuntary bankruptcy. It was in some of its features even more drastic than the repealed law, and its schedule of fees, costs and other allowances was unnecessarily high. In one form or another and under one name or another it was pending in both houses of Congress for many sessions—during eight or ten years in all, I think—but it never found sufficient favor to pass both houses of Congress. When I became a member of the Senate, during the session of 1895-96, I found the bill pending in the Senate. I think it was also pending in the House, but of that I am not certain. And this brings me to a point where perhaps it is not out of place to give you in brief terms the genesis of the act of 1898—the existing law.

In 1896-7-8 we were still suffering from the effect of the hard times which began in 1893. The financial wrecks were many, and on all sides. Many bright and energetic men, full of vim and eager to take a new start in life, found themselves utterly helpless and unable to gain a new foothold because of their financial embarrassment, and because of the fact that whenever they again attempted to embark in business and made a little headway some merciless creditor would pounce upon them and again break them up. Occasionally some sought to bridge over the difficulty by carrying on business under their wives' or some relative's name; but this proved very unsatisfactory and was distasteful to men of character and spirit. These men, thus helpless, were in many instances the most active and enterprising men in the community. They were men who bred work and industry at the places and in the neighborhoods where they lived. Manifestly it was for the benefit of the community as well as for themselves and their families that these men should be permitted to surrender what they had had to their creditors, and then be allowed to secure a discharge from all existing claims, and thus be given a free hand to begin life over again, as it were, unhampered with their old debts. Without this relief many of them would have been a burden to society and to themselves, and their creditors would only have had the satisfaction of perpetuating them in their distress.

When I became a member of the Senate many unfortunate debtors, in our State and elsewhere, urged me repeatedly and vehemently to secure the passage of a bankruptcy law, and it seemed to me, in view of the conditions then prevailing and in view of our expensive and unsatisfactory State Insolvent Law, that such legislation was warranted and necessary. In casting about and taking my bearings as to what could be done in the premises, I found two bills pending in the Senate, the Torrey Bill, to which I have already referred, and the George Bill, so called because introduced by Senator George of Mississippi. The George Bill embraced only voluntary bankruptcy. Upon canvassing the Senate I found that neither bill was actively pressed and that the George Bill seemed to have the most friends. I was unable to get a move on either bill during that Congress, and became satisfied that the Torrey Bill could not pass. I then came to the conclusion that I would try my hand at drafting a bill, and accordingly, taking the George Bill as a basis—for I knew that had the most friends—I prepared a bill of my own. The bill was devoted largely to voluntary bankruptcy, but contained some grounds for involuntary bankruptcy. I prepared the bill not exactly as I should have wanted it, but as I thought it could pass. At the special session called March, 1897, the Torrey Bill was again introduced and I introduced mine. Both were referred to the Judiciary Committee, of which I was not then a member. The committee reported the Torrey Bill favorably, and it was taken up for consideration in the Senate. I

then offered my bill as a substitute, and both bills were debated at some length. The Senate adopted the substitute—my bill—by a fair majority, and the bill in that form was sent to the House. In the House the bill received no consideration that session, for Speaker Reed would allow no other general legislation to be considered than the Dingley Tariff Bill. At the next session the House took up the Senate bill—my substitute—and substituted the Torrey Bill for it, and in that form sent it back to the Senate. The bill, thus amended, was then referred to a conference committee of the two Houses, consisting of three from the House and three from the Senate. Judge Ray, of New York, was one of the House conferees and I was one of the Senate conferees. Our colleagues left us two to do all the reconciling between the two bills—the Torrey Bill and my bill. The bill was in conference nearly two months. As finally agreed upon, it was a compromise, as important debatable legislation always is. I yielded as far as I felt I could yield with the hope of final passage in the Senate.

In general, it may be said of the bill, finally agreed upon and which became a law, adopted the provisions of the Torrey Bill as to procedure and the provisions of my bill, with additions suggested by me as to grounds for involuntary bankruptcy, the conditions under which a discharge was to be granted, and the penalties, the fees and costs. Important amendments, curing defects, giving better protection to creditors, and making it less easy to secure a discharge, were added in 1903.

With this digression, for which perhaps I owe you an apology, I shall now proceed to briefly point out and comment on the most important features of the law, but before doing so I ask you to bear in mind that the chief purpose of any bankruptcy law must necessarily be, first, to put all the creditors of a bankrupt on a footing of equality, so that none have a preference and each gets his just proportion of the estate of the bankrupt, and, second, that if the bankrupt honestly and truly turns over all his property to his creditors he can obtain his discharge, so that he may be able, unembarassed, to take a new start. The advantage to the creditors is that they sequester and secure the entire estate of the bankrupt on a footing of equality without a preference to any, and the advantage to the bankrupt is that he gets complete absolution and can, with freedom, begin anew.

One of the important features of the present law is that it makes a new rule as to what constitutes insolvency. Under the law of 1867, as well as under the interpretation of the courts, a person, no matter how much property he might have, if he was unable to pay his commercial paper when due, was deemed insolvent, and could be proceeded against as a bankrupt. Under the present law the rule is that: "A person shall be deemed insolvent whenever the aggregate of his property, exclusive of any property, which he may have conveyed, transferred, concealed or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts."

In the panicky and dire times of 1893-4-5 how many banks, commercial and manufacturing concerns were there not, which would have been deemed insolvent and bankrupt under the old and rigid rule, of insolvency, that finally weathered the storm and liquidated all their obligations in full. The crop of bankrupts, under that rule in those times, would indeed have been immense and startling.

Under the present law no one can become a bankrupt unless he is insolvent as defined in the act. Any person who owes debts, except a corporation, may, upon his own petition, become a voluntary bankrupt.

The reason corporations were excepted was this, that the bankruptcy of a corporation would involve practically, if not technically, a dissolution, and the privilege of thus dissolving a corporation ought to be accorded only to the creditors, and that it would be a dangerous power to allow the officers of a corporation to put it into bankruptcy without the consent of the creditors and stockholders.

As to involuntary bankrupts: "Any natural person, except a wage-earner, or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, mining or mercantile pursuits, owing debts to the amount of $1,000 or over, may be adjudged an involuntary bankrupt upon default or an impartial trial. Private bankers, but not National banks or banks incorporated under State or Territorial laws, may be adjuged involuntary bankrupts.

"The bankruptcy of a corporation shall not release its officers, directors or stockholders, as such, from any liability under the laws of a State or Territory or of the United States."

The following are the grounds for involuntary bankruptcy: Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4) made a general assignment for the benefit of his creditors, or, being insolvent, applied for a receiver or trustee for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a State, of a Territory, or of the United States; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

And the proceedings are initiated as follows: A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after the date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment.

This petition may be filed by the following named persons: Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to $500 or over: or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

After due service of process, a hearing is had on the petition before the court, and in this hearing the defendant or alleged bankrupt may have a jury trial upon the issues as to whether he is insolvent and has com-

mitted an act of bankruptcy. The burden of proving his solvency is cast upon the defendant for the means of proving the same are peculiarly within his own knowledge. If upon such hearing and trial he is adjudged a bankrupt his estate is passed into the care and keeping of one or three trustees, selected by the creditors, whose duty it is, under the direction of the court, to realize the estate and reduce the same to money and distribute the same among the creditors who have duly proved their respective claims. When three trustees are appointed two must always concur in every official act. Suitable provision is made for the proof and allowance of all claims.

The trustee is required to comply with the following provision: The trustee shall, within thirty days after the adjudication, file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded in every county where the bankrupt owns real estate not exempt from execution, and pay the fee for such filing, and he shall receive a compensation of 50 cents for each copy so filed, which, together with the filing fee, shall be paid out of the estate of the bankrupt as a part of the costs and disbursements of the proceedings; and the following rule governs in the payment of dividends: The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals 5 per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal 10 per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order: Provided, that the first dividend shall not include more than 50 per centum of the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as probably will be allowed. And provided further, that the final dividend shall not be declared within three months after the first dividend shall be declared.

The following is the rule of compensation provided for the trustee: Trustees shall receive for their services, payable after they are rendered, a fee of $5 deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which they have administered such commissions on all moneys disbursed by them as may be allowed by the courts, not to exceed 6 per centum on the first $500 or less, 4 per centum on moneys in excess of $500 and less than $1,500, 2 per centum on moneys in excess of $1,500 and less than $10,000, and 1 per centum on moneys in excess of $10,000. And in case of the confirmation of a composition after the trustee has qualified the court may allow him, as compensation, not to exceed one-half of 1 per centum of the amount to be paid the creditors on such composition. And if there are three trustees or several successive trustees, no more compensation shall be paid than if there had been one single trustee throughout the case. When the amendatory act of 1903 was under consideration we discovered that some courts had been in the habit of allowing extra compensation to the trustees. To prevent the recurrence of this we inserted the following section in the law:

Section 72. That neither the referee nor the trustee shall in any form or guise receive, nor shall the court allow them, any other or further compensation for their services than that expressly authorized and prescribed in this Act.

The jurisdiction of bankruptcy proceedings is vested in the United States District Court. To aid the court in the administration of the law

the court is required to appoint as many referees as may be needed for the convenience of business. These referees hold for the term of two years, and have charge of what in brief I may term the routine work of administration which would otherwise be entailed upon the judges. I have not time to specify in detail their various duties nor is it necessary or germane on this occasion. The following is the compensation allowed a referee. Referees shall receive as full compensation for their services, payable after they are rendered, a fee of $15 deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and 25 cents for every proof of claim filed for allowance, to be paid from the estate, if any, as a part of the cost of administration, and from estates which have been administered before them 1 per centum commissions on all moneys disbursed to creditors by the trustee, or one-half of 1 per centum on the amount to be paid to creditors upon the confirmation of a composition.

The Clerk of the Court receives a fee of $10, in each case, in full for all his services. The marshal receives the same fees as in other cases for similar services. The bankrupt is allowed the exemptions given him by the laws of his State.

The following duties are entailed upon the bankrupt and made mandatory: The bankrupt shall (1) attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed; (2) comply with all lawful orders of the court; (3) examine the correctness of all proofs of claims filed against his estate; (4) execute and deliver such papers as shall be ordered by the court; (5) execute to his trustee transfers of all his property in foreign countries; (6) immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of this Act, coming to his knowledge; (7) in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8) prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition; if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee: and (9) when present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding.

Provided, however, That he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the court, or a judge thereof, for cause shown, and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town or village of his residence; and the following special rule of evidence is laid down in the act: A court of bankruptcy may, upon application of any officer, bankrupt

or creditor, by order require any designated person, including the bankrupt and his wife, to appear in court or before a referee or the judge of any State court, to be examined concerning the acts, conduct or property of a bankrupt whose estate is in process of administration under this Act. Provided, That the wife may be examined only touching business transacted by her or to which she is a party, and to determine the fact whether she has transacted or been a party to any business of the bankrupt.

The word "conceal," found in the act, includes secrete, falsify and mutilate. The word "transfer" includes a sale and every other and different mode of disposing of property. A "wage-earner" is one who works for wages, salary or hire at a rate of compensation not exceeding $1,500 per year.

The following are the rules governing preferences and preferred creditors: A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.

If a bankrupt shall have given a preference, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person. And, for the purpose of such recovery, any court of bankruptcy, as hereinbefore defined, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

The claims of creditors who have received preferences, voidable under Section 60, Subdivision b, or to whom conveyances, transfers, assignments or incumbrances, void or voidable under Section 67, Subdivision e, have been made or given, shall not be allowed unless such creditors shall surrender such preferences, conveyances, transfers, assignments or incumbrances.

And the following relates to fraudulent or illegal transfers: That all conveyances, transfers, assignments or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this Act subsequent to the passage of this Act and within four months prior to the filing of the petition, with the intent and

purpose on his part to hinder, delay or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned or encumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory or District in which such property is situate, shall be deemed null and void under this Act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt. For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

The following are the crimes and offenses created and defined by the Act: A person shall be punished, by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; or (2) made a false oath or account in, or in relation to, any proceeding in bankruptcy; (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney, or as agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this Act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

A person shall be punished by fine, not to exceed $500, and forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly (1) acted as referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, directly or indirectly, any property of the estate in bankruptcy of which he is referee; or (3) refused, while a referee or trustee, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of, estates in his charge by parties in interest when directed by the court to do so.

And the following are the methods, the grounds and the conditions under which a discharge can be obtained: Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the Court of Bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

The judge shall hear the application for a discharge, and such

proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with intent to conceal his financial condition, destroyed, concealed or failed to keep books of account or records from which such condition might be ascertained; or (3) obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit; or (4) at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed or concealed, or permitted to be removed, destroyed or concealed any of his property with intent to hinder, delay or defraud his creditors; or (5) in voluntary proceedings been granted a discharge in bankruptcy within six years; or (6) in the course of the proceedings in bankruptcy refused to obey any lawful order of or to answer any material question approved by the court.

The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

The following debts are not released or affected by a discharge: A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district or municipality in which he resides; (2) are liabilities for obtaining property by false pretenses or false representations, or for wilful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

There are many other provisions in the law relating to procedure and other details which I cannot on this occasion quote or refer to, but I think I have given you the most important and the controlling ones.

From this you will understand, if you have followed me, or are otherwise familiar with the subject, that the law, if properly applied and enforced, is not as lax or unguarded as many suppose. If the dishonest or fraudulent bankrupt is thoroughly probed in court, as he may be in many ways under the act, he cannot get his discharge. Whatever laxity there may have been in the original act of 1898, which I have explained to you was largely a compromise, was removed and cured by the act of 1903. All that the representatives of the credit men, the commercial and financial classes of the country, after a trial and experience of four years, asked and suggested was incorporated in that act.

The Supreme Court has practically held that a partial payment, made in ordinary course of business by an insolvent debtor, although the same was received in good faith and without knowledge of the insolvency and without intent to secure a preference, was nevertheless a preference under the law and would compel the creditor to surrender the same before he

would be allowed to prove and receive a dividend in the residue of his claim. This was the most serious ground of complaint, and the amendatory act cured this.

It was further urged that the fees of the trustees, in the original law, were so small that it was difficult to get competent men, especially for complicated and involved estates, to act. The amendatory act made a moderate increase in the fees.

It was further suggested that additional restrictions should be placed upon the right to secure a discharge. This, too, was provided for by the amendatory act. Under the original act the bankrupt could obtain his discharge unless he had committed an offense punishable by imprisonment, or had with fraudulent intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed or failed to keep books of account or records from which his true condition might be ascertained.

Under the amendatory act four additional conditions were imposed, to-wit: (1) Obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit; or (2) at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed or concealed, or permitted to be removed, destroyed or concealed any of his property with intent to hinder, delay or defraud his creditors; or (3) in voluntary proceedings been granted a discharge in bankruptcy within six years; or (4) in the course of the proceedings in bankruptcy refused to obey any lawful order of or to answer any material question approved by the court.

In any of these cases he cannot secure his discharge.

Some minor changes were also suggested and made in the matter of procedure. At the time this amendatory act was passed I was a member of the Judiciary Committee and had charge of the amendatory bill in the Senate and know that substantially all that was asked for at that time was incorporated in the bill.

While the law undoubtedly still has imperfections, and what human law has not, and might be improved in several particulars, yet I think that all persons, who are conversant with our bankruptcy laws from 1800 down to the present moment, will concur in the opinion that, on the whole, the present law is by far, taking all matters into consideration, the fairest, the most equitable and the least expensive of all the bankruptcy laws that have, from first to last, been on our statute books.

The Attorney-General of the United States is required to lay before Congress annually a report upon the operation of the law. I beg leave to quote the following from his reports.

In the report for 1898 he states:

"The law of July 1, 1898, is a vast improvement over previous legislation. It has profited by the experience gained under the earlier laws and retains their good features, while many other important and valuable provisions have been added to meet the present need and demand of the people. The system as found in this law is most complete, even to many of the minutest details, although some minor amendments may be suggested and others will be as the actual workings of the law demonstrate the necessity therefor."

In the report of 1899, in speaking of the matter of cost, he says:

"It may be safely said, however, that, as a rule, the charges for proceedings in bankruptcy under this law are reduced almost to a minimum."

And again in the report of 1901 he states:

"A careful inspection, however, of the various reports as filed discloses the fact that this charge is reduced to a minimum, and it may be safely said that it is materially less than the amount usually incurred in the settlement of an insolvent's estate in accordance with the ordinary procedure under the State assignment or insolvency laws."

In this report he further states:

"That the bankruptcy law is meeting with approval on all hands is best attested by the fact that the American Bar Association in its recent convention at Denver, and the National Association of Credit Men at its Convention at Buffalo, and other organizations have by resolution reiterated their belief in the advantages of the law, and recommended that it be kept upon the statute books. There are, of course, isolated cases where exception is taken, but when sifted it usually develops that such opposition grows out of its operation in some way working injuriously to an individual and not because the law is not advantageous to the community of the United States as a whole."

In the report for 1902 he states:

"A careful inspection of the various reports, however, shows the fact that these costs are reduced to a minimum, and consequently a larger percentage is paid on claims filed than would be the case in the absence of the bankruptcy law under the various State laws, and the creditors are accordingly benefited thereby."

He further adds:

"Notwithstanding criticisms of minor provisions of the present law, as a whole it is greatly preferred by the commercial interests to the diverse State statutes on the question of insolvency which vary with the number of States."

In the report for 1903, after the amendatory act was passed slightly increasing the fees of the trustee and referee, he states:

"That the charges incident to the conduct of a proceeding in bankruptcy are less than those ordinarily incurred in connection with the administration of an estate under the insolvency laws of the different States is generally admitted."

In the last report, that of 1904, he states:

"The act of February 5, 1903, amending the act of July 1, 1898, establishing a uniform system of bankruptcy throughout the United States, enacted in pursuance of an almost universal demand of the bar as well as of the commercial interests of the United States, has now been in operation sufficiently long to demonstrate its real value. The operation of the law as thus amended has almost entirely disarmed criticism and, except in occasional instances of persons who have some individual grievance, complaint has practically disappeared. * * * The advantages of the Federal law over the various State insolvent laws become more and more apparent to the business interests of the country as familiarity with its provisions increases. This is particularly true of those provisions which place all creditors upon an equal footing, thereby avoiding conveyances and transfers of the insolvent's property to the disadvantage of other creditors and substituting a much more economical and expeditious method of settling an insolvent's estate than that provided for under the various State insolvency laws. A few complaints are still occasionally made, arising out of the provision of the Federal bankruptcy law that relieves a debtor of his obligations, by those who appear to be ignorant of the fact that in the absence of the general law a debtor could still have taken advantage of the State assignment and insolvency laws, and thus have been relieved of many, if not all, of his obligations."

These reports, which cover the operations of the law throughout the

entire country, demonstrate the advantages and benefits of the law to our commercial and financial classes and show the necessity for its existence. So far as I know all the great commercial and enlightened nations of the world have a general system of bankruptcy laws. To leave us without a national system, and to commit the vast commercial, manufacturing and financial interests of our great country to forty-five different State insolvent laws, is not only from a broad national standpoint, compared with other nations humiliating, but it is also unjust and a disadvantage and drawback to these great interests.

Under our State insolvent laws the insolvent debtor can by an assignment put his estates into the hands of an assignee, or his creditors can put his estate into the hands of a receiver, for liquidation and distribution. In either case the creditors get no share of the proceeds unless they give a release for everything except what they secure from the estate. They have an option to share and release, or to still keep their claim in the air. The process of liquidation and distribution is cumbrous and dilatory as compared with that under the bankruptcy law. There is no limit of fees and allowances except the discretion of the judge. In many instances enormous fees have been allowed the receiver and his attorney out of all proportion to the real service rendered. There have been instances in this State where district judges have resigned their places for the sake of being receivers or attorneys for receivers of insolvent estates. I think any person who is fully conversant with the operation of our State insolvent law, especially as a creditor, would by all odds prefer to have his claim against an insolvent liquidated in a Federal court of bankruptcy rather than in insolvency proceedings in our State courts. In the former case he could count on getting his just share of the proceeds.

And where no insolvency laws are found, or made use of, then in the case of an insolvent debtor there is a struggle and race for priority under State attachment laws, a most wasteful and expensive method. And the creditor who first moves may be fortunate enough to collect his claim while his brother creditors, who have been more lenient and dilatory, are left helpless and entirely in the cold. To any mercantile or financial concern that transacts business anywhere at a distance from home—away from its immediate neighborhood—it is a valuable assurance and a great satisfaction to know that under the bankruptcy law it cannot be outrun, over-reached or out-generaled by rival creditors in the case of an insolvent debtor, or one tending in that direction.

There may occasionally be a fraudulent debtor who, through perjury, secures his discharge when he is not entitled to it, but these isolated cases weigh but a trifle in the balance against all the good results that inure to the commercial world under the law.

The rogue can find much easier loopholes of escape under the State insolvent laws, and these laws are, after all, a mere local makeshift and substitute for a general bankruptcy law. They are based on the same want and the same principles as such a law, but to a large extent they fail to give such favorable results and are much more wasteful, dilatory and expensive, and fail to give as good return to the creditors.

We are all apt to look at matters from the standpoint of our immediate environment and from the standpoint of our own personal experience. But when we come to legislate for a great country, such as ours, with its more than 80,000,000 people, we must take a broader and more general view of the subject, and look beyond the isolated case that has come under our observation, and aim to get such a result, as near as may be, that will, in general, accomplish the most good for the industrial, the commercial and financial interests of the country. Our vision and our

aim should not be limited or bounded by State, county or local lines. The great currents of traffic and trade throb to the uttermost limits of our country and we are all sharers to a greater or less extent in the general prosperity. The commercial world breathes freer, rests easier, and is possessed of more confidence with a National Bankruptcy Law than with forty-five different insolvent and assignment laws. Uniformity and certainty in the administration of insolvent estates ought to prevail throughout the entire country, and this is best secured through a National Bankruptcy Law.

Coal Yard Credits

BLINKERS—"I say, Clinkers, why do you keep me waiting so long for the coal I ordered?"

CLINKERS—"My dear Blinkers, do you forget that you take eight months in paying for it?"

The Commercial Law League of America Favors a Permanent National Bankruptcy Law

Resolutions adopted at the Annual Convention.

Resolved, That the Commercial Law League of America re-affirms its adherence to the principle of a permanent National Bankruptcy Law.

Resolved further, That a committee of seven to be known as the Special Committee on Bankruptcy Legislation be appointed by the President. The said committee is authorized and empowered during the interim between Conventions to consult and co-operate with such legal and commercial organizations as are engaged in efforts to secure the further advancement of the present Bankruptcy Act, or to prevent its repeal.

Resolved further, That all resolutions offered and matters discussed at this Convention relating to National Bankruptcy Law be left to such committee with power to act.

Better Lose Some Trade than Give too Much Credit

In some of our correspondence with harness dealers doing a comparatively small business we have met with inquiries concerning the best methods of handling that portion of their business which has to be done on credit. This is an unpleasant subject for the editor to handle. The editor is not in the position to speak with authority or advisedly. It is

apparent, however, that many of our correspondents have regretted the extent to which they had granted credits and would gladly curtail if they knew how. They figure up sometimes the amount of business they could have lost and come out just as well considering what they lost in bad debts. This is a very good way to look at it. A bad debt spoils the profit on a good deal of good business. It is better to do less business and do it right than to do more business and do some of it wrong. Some of our correspondents tell us that their biggest losses were among the very people in whom they had the most confidence, and that there was nothing to guide them at the time they run the accounts to indicate possible loss.

In a general way, harness ought to be paid for in spot cash. There is something wrong when any man who needs harness has to get it on credit. It is very true that farmers, particularly, are obliged to wait until they harvest and sell their crops before they can pay their bills. This applies to others besides farmers. But each year brings us closer to the point where all who buy harness ought to have the money to pay for it if they managed their affairs as the harness makers manage their affairs. The giving of credit, speaking generally, is not good business. The man who keeps his harness, rather than write a line with the pen on a book charging up a customer so much money, is generally a wiser man than the man who extends the credit. While an immense amount of business in this country is being done on credit, the necessity for credit is lessening. Credit is year by year becoming more and more a matter of convenience and mere bookkeeping than a matter of necessity. Those who keep in touch with the Credit Men's Association know how true this is. Insolvency or insolvent conditions are becoming more and more rare. Solvency is becoming more and more general. Therefore, when a customer asks for credit look carefully as to why he should ask it.—*Harness Gazette.*

A Boom for Prendergast

Odell's Oratorical Critic Talked of as Candidate for Borough President.

It was announced yesterday that William H. Prendergast, who administered an oratorical lambasting to Governor-Chairman Odell while placing Timothy L. Woodruff in nomination for Governor at the last State Convention, may be put forward this fall as a candidate for the Republican nomination for President of the Borough of Brooklyn. Mr. Prendergast has hosts of friends in the borough who regard him as one of the strongest men who could be named for the office, but many of them are of the opinion that Chairman Odell would find ready means to block his political advancement in revenge for his bitter speech at the Saratoga Convention.

Mr. Prendergast retired from active politics a few years ago, but he has re-entered the arena and will undoubtedly be heard from in the coming campaign. He is admittedly one of the most brilliant Republican orators in Brooklyn and would make a highly picturesque campaign. He is one of the leading Catholic laymen in the borough.—*New York Sun.*

Salesmen as Collectors

From *The Sample Case:* The average commercial traveler, however successful he may be securing orders, is not a good collector. Fortunately the banking facilities of the country are of such a character as to encourage the merchant to discount his bills which if not done, permits the creditor to draw for account on maturity, thus relieving the salesman of this much responsibility and a duty which under the most favorable conditions is an unpleasant and onerous one.

Experience shows that the customer buys more freely from the man with the samples when he appears on the scene, if the dealer is "square" with the house and no large or overdue statements of indebtedness loom up like "Banquos' ghost" to cast a pall over the interview. When this is not the case it requires a finesse of financial diplomacy on the part of the salesman to enable him to book an order. With the subsequent suggestion that the old score may not be wiped out or that the buyer may take umbrage at what some of them are pleased to dominate as a "dun," which he is inclined to view in a personal manner as an affront if not a positive insult. This is not always the case, but suggests that a crisis of this nature may arise before mercantile transactions are fully closed between the parties interested.

The Commercial Law League of America Hold their Annual Convention

The Annual Convention of the Commercial Law League of America opened on July 31st at Niagara Falls, N. Y.

The Convention continued for four days. The first day being given over to meetings of the Executive Committee, two sessions of that Committee being held, which were followed in the evening by a reception and dance.

At ten o'clock on Tuesday, August 1st, President Bledsoe called the first business session to order, and after listening to an invocation by Dr. Bacon, the members and their friends were welcomed to Niagara Falls in an appropriate address by Mayor Cutler.

Speaking for the League, the Hon. J. O. Murfin, of Detroit, Michigan, responded in a fitting manner to Mayor Cutler's welcome. Following these preliminaries President Bledsoe presented the President's annual address, which was carefully prepared and proved to be extremely interesting. (A considerable portion of President Bledsoe's address is printed in this issue of the BULLETIN.)

The programme provided that the next order of business should be the submission of the Reports of Officers and Committees, which were received in the following order:

Treasurer's Report, Secretary's Report, Report of Executive Committee, Report of Legislative Committee, Report of Committee on Co-operation, Finance Committee's Report, Auditing Committee's Report. The reports reflected a very active year in League affairs.

During the Convention a number of addresses were made by prominent members of the League and others, and following is the order in which they were delivered:

"What the Name, Commercial Law League of America, Suggests," James C. McMath, Chicago, Ill.

"Mortality of Trusts," Henry Wollman, New York.

"Greetings from the National Association of Credit Men," J. Harry Tregoe, Baltimore, Md.

"How to Make a Collection and Reporting Department in a General Law Office Self-sustaining," Albert N. Eastman, Chicago, Ill., and George L. Nye, Denver, Col.

"Some Aspects of the Practical Administration of the Bankruptcy Law," Hon. David W. Amram, Philadelphia, Pa.

"The Present Movement Towards Amendment," Hon. Wm. H. Hotchkiss, Buffalo, N. Y.

"Efficacy of the Bankruptcy Law from the Lawyer's Point of View," Frank Wells, Oklahoma City, O. T.

The last business to be taken up before final adjournment was the election of officers. There was no contest over either the presidency or

the vice-presidency, these offices going to George Wentworth Carr, of Philadelphia, Pa., and H. G. W. Dinkelspiel, of San Francisco.

The entertainment which the League provided for its members and guests was thoroughly enjoyed by all. It included a night trip down the Gorge, a feature of the trip being the use of searchlights, by means of which the Falls and the Rapids were exhibited in a novel and attractive manner.

On the evening of August 3d, the League tendered a banquet to its members. The Banquet Committee provided not only an excellent menu but had an attractive programme of after-dinner speaking arranged, which was participated in by a number of gentlemen prominent in the affairs of the League. The toast master of the occasion was Mr. Tom H. Reynolds, of Kansas City, Mo. Those who indulged in speech-making and the toasts to which they responded were:

George Wentworth Carr, "Commercial Law League of America."
William C. Sprague, Detroit, "Friends, Old and New."
Frank M. Thorn, Buffalo, N. Y., "Trusts."
J. F. C. Waldo, New Orleans, La., "The Ladies."
Edgar F. Brown, Syracuse, N. Y., "A Clearing House for Troubles."
H. J. Allen, "The Press."
Dr. S. Wright Butler, Poughkeepsie, N. Y., "Surrebuttal."

August Meeting of the San Francisco Credit Men's Association,

REPORTED BY SECRETARY ARMER.

The San Francisco Credit Men's Association held their regular meeting and dinner on August 22, 1905, at the Occidental Hotel. The meeting was well attended, and a splendid dinner was enjoyed. At the conclusion of the dinner the Chairman, Mr. Gustav Brenner, presided in his usual happy manner and introduced as the first speaker of the evening Mr. Carl Eisenschimel, the noted handwriting expert, who delivered a very interesting discourse on "Forgery and its Detection," and by means of photographic enlargements illustrated some of the most noted forgery cases and explained the manner of detection. Although Mr. Eisenschimel held the boards for an hour and a half with his discourse, the audience were loath to let him retire.

The Rev. Wm. Rader was next called upon and delivered a very able address on "Business Methods as a Builder of Cities." Mr. Rader is an orator of rare ability, and his remarks were eagerly listened to.

Business discussions followed, and when an adjournment was taken, all declared this one of the most successful meetings given by the Association.

Directory of Officers of the National Association of Credit Men, and Affiliated Branches.

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OF THE

NATIONAL ASSOCIATION OF CREDIT MEN.

1905-1906.

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